



JOHN CORNYN

October 30, 2000

Mr. Daniel M. "Matt" Burns  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 2156  
Austin, Texas 78768

Dear Mr. Burns:

Enclosed please find a copy of ID# 140748 (OR2000-4160). The original document sent to you inadvertently was not printed on letterhead. We apologize for any inconvenience this oversight may have caused.

Sincerely,

Shelley Grounds  
Secretary to:  
Yen-Ha Le  
Assistant Attorney General  
Open Records Division

Ref: ID#s 140748

Encl: OR2000-3160

cc: Ms. Jana D. Bowen  
Texas Board of Professional Engineers  
P.O. Drawer 18239  
Austin, Texas 78760-8329  
(w/enclosure)



October 26, 2000

Mr. Daniel M. "Matt" Burns  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2000-4160

Dear Mr. Burns:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140748.

The Big Spring Independent School District (the "district"), which you represent, received a request for an engineering report related to the construction of a district junior high school. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note at the outset that the request for information submitted to the district is not from a member of the public but from another governmental entity. We ruled in Open Records Decision No. 661 (1999) that whether a governmental entity may release information to another governmental entity is not a question under the Public Information Act (the "Act") as the Act is concerned with the required release of information to the *public*. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions, H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.,* Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976),

H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984). Accordingly, the district has the discretion to release the requested information to the Texas Board of Professional Engineers. However, should you decline to exercise that discretion, you must nonetheless adhere to the following decision regarding the applicability of your claimed exceptions to the requested information.

You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.<sup>1</sup> The submitted information consists of a completed report. Section 552.022(a)(1) of the Government Code makes completed reports made of, for, or by a governmental body public and not excepted from required disclosure under chapter 552 of the Act unless the information is expressly confidential under other law or excepted from disclosure under section 552.108. Gov't Code § 552.022(a)(1). Our office has previously concluded that sections 552.103 and 552.107 are discretionary exceptions. *See* Open Records Decision Nos. 630 (1994) (section 552.107 is a discretionary exception), 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation, and does not itself make information confidential). We do not believe that these exceptions "expressly [make] information confidential under other law." Gov't Code § 552.022. Therefore, the requested information may not be withheld under either of the claimed exceptions and must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

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<sup>1</sup>You also assert the attorney-client privilege under section 552.101 to protect from disclosure the submitted information. Although this office at one time applied the attorney-client privilege under the statutory predecessor to section 552.101, we today believe that the privilege is properly asserted in the context of the Public Information Act only under section 552.107(1). *See* Open Records Decision No. 575 at 2 (1990).

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/ljp

Ref: ID# 140748

Encl. Submitted documents

cc: Ms. Jana D. Bowen  
Texas Board of Professional Engineers  
P.O. Drawer 18239  
Austin, Texas 78760-8329  
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